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EX-PARTE PRESENTATION OF METROPOLITAN TELECOMMUNICATIONS AND BRIDGECOM INTERNATIONAL, INC. IN THE TRIENNIAL REVIEW PROCEEDING

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I. The Telecom Act

- **The Telecom Act Was A Great Compromise, And Consideration Of Whether Local Switching Should Continue To Be Available On An Unbundled Basis Can Only Properly Occur With A View Towards The Overall Compromise That Was Struck**
- **The RBOCs have shifted the entire industry's focus away from the overall regulatory scheme of the Act**
- **The primary goal of Congress in enacting the Telecom Act was to promote competition and reduce prices for consumers**
- **Congress' goal has been subverted**
- **Accordingly, Congress instituted the carrot-and-stick approach of the Act, whereby grant of 271 authority was contingent on compliance with the 14-point competitive checklist, a paramount requirement of which is that the RBOCs make access to UNEs available**

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I. The Telecom Act (cont.)

- **Congress expressly envisioned that competitors would utilize three paths to market entry, *i.e.* the use of their own facilities, accessing the unbundled network elements of the RBOCs, and resale**
  - **Congress expressed no preference for one market entry strategy over another**
  - **Now that the RBOCs have largely gotten the *quid* (271 authority), they seek to renege on the *quo* (opening up their networks)**
  - **But that is the point of the compromise, the RBOCs have given something of value to receive something of value**
  - **RBOCs have persuaded many that the Telecom Act is unfair to them because it forces them to give access to competitors who then reduce prices to consumers**
  - **That is exactly what Congress intended and Congress did not give the Commission the authority to change the primary goal of the Act**
  - **The Supreme Court summarily rejected ILEC arguments regarding CLEC disincentives to deploy facilities stating that CLEC investment belies any such argument**

I. The Telecom Act (cont.)

- **MetTel and Bridgecom formulated their business plans in reliance on Congress' prescriptions, business plans that would be frustrated at best, and more likely irrevocably harmed by removal of local switching from the list of UNEs**

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II. Description of the Companies

- **MetTel is a New York based integrated communications provider that services residential and business customers**
- **It serves markets in New York, New Jersey, Pennsylvania, Massachusetts and Florida**
- **MetTel offers a full range of voice products including POTS, Class 5 features, long distance, calling cards, voice mail and Centrex**
- **MetTel offers its data products through its own next generation high speed network, including 56k connections, Web Hosting, E-Commerce Solutions, Unified Messaging, aDSL, sDSL, voice over DSL, dedicated T1, VPN, and other enhanced services**

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II. Description of the Companies (cont.)

- Bridgecom is a private telecommunications provider based out of Valhalla, New York
- Bridgecom was founded in 1997 and operates primarily in New York and New Jersey
- The company serves over 120,000 local access lines
- Bridgecom provides a myriad of services to its customers including POTS, Class 5 features, long distance, calling cards, voice mail and Centrex
- The company deploys its own messaging platform and ISP
- Bridgecom’s customers are primarily small businesses
- Bridgecom’s stated purpose is to bring the benefits of the Telecom Act of 1996 to its customers
- UNE-P providers serve over 10 million customers in the United States

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III. The Impairment Analysis

- **As indicated in the *USTA v. FCC* decision, cost is a touchstone of any "impairment" analysis**
- **With cost in mind, MetTel's and Bridgecom's ability to provide telecommunications services will be impaired absent unbundled access to local switching**
- **As explained below, if the Commission were to remove local switching from the list of elements that must be made available on an unbundled basis, it would for the most part be dictating the form that competitors' network architecture must take**
- **Many CLECs that are far better financed than MetTel and Bridgecom have attempted to deploy such a network and have failed**
- **The remaining CLECs with this network architecture, e.g. Allegiance, Focal, Looking Glass, and Choice One, are severely struggling**

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III. The Impairment Analysis (cont.)

- **If unbundled local switching was not available to MetTel and Bridgecom, the two companies would incur the following categories of costs:**
  - **Costs associated with procuring and installing a Class V switch**
    - **While such costs have fallen in the last few years, the costs associated with installing a Class V switch ranges from $3,000,000 to $5,000,000**
  - **Transport costs**
    - **MetTel and Bridgecom will be required to deploy interoffice transmission facilities (typically at T-1) to each and every ILEC central office where they have customers**
    - **Interoffice transmission facilities have recurring, non-recurring, and distance sensitive charges associated with them**
      - **These charges vary dramatically based on the geographic area served**

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III. The Impairment Analysis (cont.)

- **Collocation Costs**
  - **MetTel and Bridgecom will be required to collocate at each and every ILEC central office where they have customers, at significant cost**
- **Hot cut costs**
  - **The TELRIC rate for hot cuts in MetTel's and Bridgecom's primary market is $185**
- **CLECs also incur their own costs when performing a hot cut**
  - **Though few studies have been performed on such CLEC costs, it can reasonably be assumed that a CLEC's costs approximate the ILEC's costs**

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III. The Impairment Analysis (cont.)

- **Operational Impairments**
  - **The costs of switch deployment, transport facilities, collocation and hot cuts are not the only impairments faced by MetTel and Bridgecom**
  - **RBOCs have stated that they can only accommodate a very limited number of hot cuts per central office per day**
  - **No mechanism exists to ensure an orderly and seamless mass migration of CLEC customers**
  - **Service disruption and loss of customers serve as hidden impairments**
  - **The extraordinary amount of time required to transition customers, even assuming complete cooperation from the RBOCs, serves as a significant operational impairment**

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IV. Market Facts and Reality

- **Ubiquitous market entry under the Commission's proposed network architecture is not commercially feasible**
- **Market reality best demonstrates this truth**
  - **Many of the most prominent CLECs such as Allegiance and Focal have attempted to deploy such networks**
    - **These CLECs entered the market after passage of the Telecom Act, when they could obtain the financing necessary to construct such networks**
  - **Seven years later, virtually none of these CLECs is profitable, and most have or soon will fail**

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IV. Market Facts and Reality (cont.)

- **More importantly, MetTel and Bridgecom would have to scale back their network and customer bases**
  - **Collocation and the deployment of transport facilities in order to reach all of their current customers would not be feasible**
  - **MetTel and Bridgecom would be forced to collocate and deploy transport facilities only to select urban central offices**
    - **These central offices are typically located in business districts**
  - **MetTel and Bridgecom would have to shed their customer bases for any customers not served by one of the select central offices in which they are collocated**
  - **Any possibility that MetTel and Bridgecom could serve outlying or rural areas would thus be eliminated**
- **Astonishingly, in view of this insurmountable cost barrier to competitive entry into residential areas, the RBOCs have accused CLECs of cherry-picking**

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IV. Market Facts and Reality (cont.)

- **MetTel and Bridgecom do not suggest that they have no intention of deploying their own network infrastructure**
- **Rather, MetTel and Bridgecom merely assert that they must be allowed to pursue alternative market entry strategies to achieve a "critical mass" of customers**
  - **Resale is a money losing proposition, and no reseller has proven to be able to bear such losses until such time as it can deploy its own network**
  - **Absent UNE-P, MetTel and Bridgecom would have to construct entire networks before earning any revenue**
  - **Even if MetTel and Bridgecom could endure this period, they would have no customers the day that their networks are lit**
- **As Congress envisioned, MetTel and Bridgecom must remain free to pursue alternative market entry strategies such as UNE-P to earn revenue and establish a customer base until such time as they are in a position to deploy their own network**

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V. The Role of the States

- **State PUCs are in the best position to evaluate whether CLECs' ability to provide service within their state is impaired, and what network elements must be made available on an unbundled basis to promote competition**
- **The FCC should not abrogate the authority of State PUCs to do so**
- **The FCC has recognized that State PUCs have parallel jurisdiction in the area of unbundling**
- **The court in *USTA v. FCC* indicated that the FCC should consider unbundling issues at a greater level of "granularity," *i.e.*, the FCC should look at local factors, in an effort to determine the appropriate unbundling standards for various markets**
- **States are also in the best position to determine UNE costs**

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VI. Conditions Precedent to Reconsideration of UNE List

- **Proceedings must be instituted to introduce and deploy advanced technology to allow for electronic loop provisioning as urged by AT&T**
  - **This would lower costs for CLECs, allowing them access to UNE-L**
  - **Electronic loop provisioning would allow CLECs to avoid ILEC switching, hot cut and collocation costs**
  - **All CLECs, not just UNE-P based CLECs would benefit, which would also benefit consumers**
  - **This would also promote advanced facilities deployment by both CLECs and ILECs**
  - **Collocation in each Central Office would no longer be necessary due to "Hub" arrangements allowing CLECs access to loops**
  - **CLECs would connect to the ILEC at one place and the ILEC would hand-off permanent virtual circuits ("PVCs") through an ATM interface**
  - **Physical hot cuts would be unnecessary**

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VI. Conditions Precedent to Reconsideration of UNE List (cont.)

- **ILECs would need to be forced to implement such a system**
  - **Meaningful financial incentives to ensure ILEC compliance would be necessary**
    - **For example, automatic penalties for failure to meet metrics as in New Jersey**
- **Mass migration of loops would be a simpler solution**
- **This would give CLECs greater control over service creation and billing**
- **This would give CLECs full control over the type of service deployment undertaken**

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VI. Conditions Precedent to Reconsideration of UNE List

- **Proceedings must be initiated to impose new provisioning obligations on ILECs under the new paradigm**
  - **For example, the RBOCs have steadfastly maintained that they have no obligation to deploy new facilities for CLECs**
    - **If CLECs were required to deploy their own switch, RBOCs would necessarily have to have some obligation imposed on them to deploy interoffice transmission facilities between its central offices and the CLEC's switch**
      - **Otherwise market entry would truly be impossible**
    - **Provisioning intervals is another issue that must necessarily be addressed**
      - **As described above, if switching were removed from the list of UNEs, every CLEC must collocate in the central office where it has customers (or abandon its customers), deploy interoffice facilities and have all of its customers hot-cut over to its network**
      - **The RBOCs already complain that they can only accommodate limited CLEC demand**
        - **Collocation takes months**
        - **RBOCs maintain that they are only able to handle a limited number of hot cuts per day**
      - **The Commission has no mechanism in place to ensure an orderly and seamless mass migration of CLEC customers**